

No. 9/5/84-6Lab./7169.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Mohan Spinning Mills, Circular Road, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 42 of 81.

between

SHRI RAJENDER SINGH, WORKMAN AND THE MANAGEMENT OF M/S MOHAN SPINNING MILLS,
CIRCULAR ROAD, ROHTAK

Present :—Shri Gurdial Singh, A.R., for the workman.
Shri M.M. Kaushal, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause(c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following disputes between the workman Shri Rajender Singh and the Management of M/s. Mohan Spinning Mills, Circular Road, Rohtak, to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/RTK/17-18/8822, dated 19th February, 1981 :—

Whether the services of Shri Rajender Singh have been terminated by the management ? If so, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. In the detailed Claim Statement filed by the workman on 2nd April, 1981, it is alleged that the work force of the respondent mill waged an incessant battle in fulfilment of their demands from March, 1979 to July, 1979, in consequence of which, the respondent mill remained closed for three months and the respondent with the help of its musclemen tried to cow down the workmen from going on strike and the toughs of the management gave beating to the workman, resulting in firing upon the peaceful workmen on 28th June, 1979 and on the said date, the aggrieved workman was on duty at the gate number 1 of the respondent mill. Fallout of the said incident was that many workmen were roped in false cases and after the re-opening of the mill, the management tried to pressurise the workman to depose against his colleagues but the workman did not succumb to their pressure tactics which angered the management, which held out threats to terminate the services of the workman and so a false case of theft was foisted upon the workman on 21st March, 1980, which is pending in the learned Court of Chief Judicial Magistrate Rohtak. It is further alleged that on 1st November, 1980 at about 10-00 A.M. the workman was called from his house through Shri Duff Chand, warden and was taken to the room of the General Manager of the respondent mill, where the Labour Officer, Shri Subhash Jain and Sughan warden and two other constables were present. The workman was given beating and duress his resignation was obtained and he was made to sign documents the import of which was that the workman has settled his accounts with the management though in fact the said resignation was not voluntary act of the workman, regarding which the workman sent intimation to the Labour Department and also sent a letter to the Hon'ble Chief Minister, Haryana, Shri Bhajan Lal on 3rd November, 1980. So, it is alleged that the alleged resignation of the workman was obtained by duress and was not voluntary act of the workman. In a detailed reply filed by the respondent, the preliminary objections taken are that since the workman has admitted the factum of resignation, his case is not covered under section 2(a) of the Industrial Disputes Act, 1947, and as such the reference is bad in law. It is further alleged that the reference made to this Court speaks of alleged termination of the workman, whereas the demand raised by the workman is different, so much so, that he has alleged that his resignation was obtained by force by the respondent and as such the reference made to this Court is beyond the scope of the dispute between the parties and as such the reference is bad in law. On merits, it has controverted the various allegations made in the demand notice. All allegations of coercion and duress have been denied. It is alleged that the resignation was a voluntary act of the workman in the presence of Shri Sultan Singh Ram Parkash, Mahesh Chander Sharma and workers of the respondent concern. Additional plea projected is that the workman has remained gainfully employed after his resignation from the respondent concern.

3. In the rejoinder filed by the workman, he has controverted the various pleas taken by the respondent and asserted the veracity of allegations made in the Claim Statement.

4. On the pleadings of the parties, the following issues were settled for decision on 5th August, 1981 :—

(1) Whether the services of Shri Rajender Singh have been terminated by the management ? If so, to what relief is he entitled ?

5. Both the parties were allowed to adduce their evidence. I have heard their Authorised Representative,

6. The learned Authorised Representative of the respondent contended that this reference is bad in law because the real controversy between the parties has not been referred for adjudication. The controversy between the parties as made out above revolves around the fact as to whether the alleged resignation of the workman tendered on 1st November, 1980 was voluntary and the same was obtained by coercion by the respondent. The reference made in this court is as to whether the services of the workman have been terminated by the management. If so, to what relief is he entitled. In support of his contention Shri M.M. Kausal cited 1984 (2) LLN197 *Sitaram Vishnu Shirodkar and Administrator Government of Goa* and others. In the authority under reference a reference to the Industrial Tribunal was made in a mechanical manner as in the present case about the termination of the workman by the management. The management took up a plea that the workman abandoned his service even in that situation the Hon'ble High Court of Bombay held that since the controversy before the Labour Court/Tribunal was beyond the scope of the terms of the reference, so the reference was bad in law and the Labour Court or Tribunal cannot travel beyond the terms of the reference and decided the question whether the workman had abandoned his services. In the present case, even in the demand notice raised by the workman dated 19th November, 1980, there are allegations that the respondent/management has obtained his resignation under duress and that he never resigned from the services with the respondent. These allegations have been controverted by the respondent/management before the court in the reply filed and presumably during the re-conciliation proceedings also. So there was no occasion for the Government to make a reference to this Court regarding alleged termination of service of the workman by the respondent management. It seems that reference to this Court has been made by the Labour Department in a mechanical and perfunctory manner without applying its mind to the demand notice filed by the workman or the defence taken by the respondent during re-conciliation proceedings. Had the Government to be more precise, the Labour Department had applied its mind to the controversy between the parties, there was no question of making a reference of termination simpliciter to this Court and the process a hapless and poor worker would have been saved from the botheration of unwanted trial spanning a period of three long years.

7. In a full bench decision of the Hon'ble High Court of Delhi in *India Tourism Development Corporation, New Delhi V/s Delhi Administration and others* reported in 1982 II LLN 762, the parameter within which a Labour Court or Industrial Tribunal can function have been amply elucidated. Their Lordships held and I quote :—

"It is settled law that the jurisdiction of the Labour Court/Industrial Tribunal in industrial dispute is limited to the points specifically referred for its adjudication and the matters incidental thereto and it is not permissible to go beyond the terms of the reference... It exercises such jurisdiction and power only upon and under order of reference limited to its terms. It cannot travel beyond the terms of reference except for ancillary matters. Making of an order of reference is undoubtedly an administrative function but even that is amenable to judicial review in the proceedings under Art. 226 under certain facts and circumstances".....

8. Since the reference is being decided purely on legal grounds, I need not touch the oral evidence adduced by the parties and in the process decide the issues framed.

9. So, in view of the Bombay High Court authority referred to above, it is held that this reference is bad in law, the same being beyond the scope of controversy between the parties. The same is answered and returned accordingly. There is no order as to costs.

Dated 18th September, 1984.

B.P. JINDAL
Presiding Officer,
Labour Court, Rohtak.

Endst No. 42/81/3270 Dated 1st October, 1984.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL
Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab./7170.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and management of M/S Bhiwani Textile Mills, Bhiwani.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 66 of 1979.

Between

SHRI CHANDER SINGH, WORKMAN AND THE MANAGEMENT OF M/S BHIWANI TEXTILE MILLS, BHIWANI.

Present :—Shri S.S. Gupta, A.R. for the workman,
Shri B.R. Chaiye, A.R. for the management.

AWARD

1. An industrial dispute reproduced below, having arisen between the workman Shri Chander Singh and the management of M/s. Bhiwani Textile Mills, Bhiwani, the Governor of Haryana, in the exercise of the powers conferred by clause (c) of sub-section(1) of section 10 of the Industrial Disputes, Act, referred the same, to this Court, for adjudication — vide Labour Department Gazette Notification No. Bhiwani 10-79/12237, dated 16th March, 1979 :—

Whether the termination of service of Shri Chander Singh was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was employed as Watchman with the respondent for the last about two and half years on monthly wages of Rs. 350 and that in the month of January, 1979, on receipt of information regarding theft in his house, he went to his native village after getting leave sanctioned from 8th January, 1979 to 15th January, 1979 and at the asking of the Security Officer of the respondent, he put his son on duty as a Watchman during his leave period but when he returned on 16th January, 1979, he was not allowed to resume his duties and all his efforts to persuade the management, proved futile and as such he was constrained to approach the workers union to press his claim but the management remained adamant and so, it is alleged that in a way the management illegally terminated his services w.e.f. 16th January, 1979, in gross violation of the provisions of the Industrial Disputes Act, 1947.

3. A detailed reply was filed by the management, in which the claim of the workman has been substantially controverted. It is alleged that the workman was employed as *Beldar* and not as watchman on monthly wages of Rs. 240 as extension of building work was going on but the workman absented himself without permission or prior leave and when he returned from absence he was asked to explain the same, who took up the matter with the workers union and raised a demand notice and that the management was always ready to take the workman on work as a *Beldar* and this stand was taken by the respondent during reconciliation proceedings before the Labour-cum-Conciliation Officer, Bhiwani, and that the Conciliation efforts fizzled out, because of the adamant attitude of the workman. On these grounds, it is alleged that the management never terminated the services of the workman at all.

4. In the rejoinder filed by the workman he has controverted the various pleas taken by the management.

5. On the pleadings of the parties, the following issues settled for decision on 13th August, 1979:—

1. Whether the workman absented his job of his own accord and the management offered to accept him on duty on the same job ? If not as per reference.

6. I am constrained to observe that this case is being fixed for arguments only for the last more than 4½ years, for one reason or the other the arguments could not be heard.

7. I have heard the learned Authorised Representative of the workman Shri S.S. Gupta and Sh. B.R. Ghaiye, Authorised Representative of the respondent. My findings on the issue framed are as under :—

Issue No. 1

8. The issue framed in this case is not happily worded but I have no option to decide the same in its present form.

9. The case of the workman is that he was employed as Chowkidar with the respondent and proceeded on leave on intimation from his native village regarding theft at his house and that when he returned on 16th January, 1979, the management refused to allow him to resume his duties.

10. On the other hand, the case of the management is that the workman was employed as *Beldar* in the building section where some extension work was going on, on monthly wages of Rs. 240 and this job was offered to him after his return from absence but the workman insisted that he shall join the respondent only as a Watchman on monthly wages of Rs. 365, which was not acceptable to the management.

11. This issue has two limbs. First part is as to whether the workman absented from his job of his own accord and the 2nd is as to whether the management offered to allow him to resume his duty on the job at which he was already working. The management has examined Shri Chotu Singh, Security Officer, as MW-1 Shri Tek Chand Gupta, Incharge, building department as MW-2, Shri Surinder Sharma, Factory Manager, as MW-4, Shri Bhopal Singh, Head Guard, as MW-3 and Shri Munshi Ram, Time keeper as MW-5. All of them stated that the workman was employed as *Beldar* in the building department on, a monthly wages of Rs. 240 and that he never worked as Watchman as alleged and no uniform.

was issued to him which are usually given to the watchmen. The management also placed on record the payment register MW-5/1 evidencing that the workman was employed as Beldar/daily wages of Rs. 7 per day in the month of April, May, 1978, Rs. 8 per day for the month of June, 1978 to September, 1978. On the other hand the workman appeared as his own witness as WW-1 and stated that he was working as a watchman with the respondent on monthly wages of Rs. 240 again stated that his wages were Rs. 355 p.m. and that his services were terminated by the management as he had filed a complaint to the union against the management as the management was not paying him his wages for 12 hours duty and that he had gone to his village after getting leave sanctioned from the management for 8 days as a dacoity had taken place at his house and when he returned, the management did not allow him to resume his duties and that he used to keep watch on the loom shed and make a search of the persons entering or leaving the loom shed and also used to issue material to the workers of electricity department. Corroboration is sought from the statement of WW-2 Shri Kishan Chand and WW-3 Shri Dharam Singh. Shri Dharm Singh stated that he was employed as watchman by the respondent and remained as such from June to August 1978 and the workman was also employed as watchman.

12. The learned Authorised Representative of the workman argued that there is no reason to disbelieve the statement of the workman which has been amply corroborated by WW-3 Shri Dharam Singh. In my opinion, the statement of the workman and his witness Shri Dharam Singh, are full of half-truths and evasive replies. In the beginning, the workman stated that he was getting monthly wages of Rs. 240 but later on he corrected himself and stated that his wages were Rs. 365 p.m. In the Claim Statement, which is detailed one, he has alleged that his wages were Rs. 350 p.m. It is difficult to arrive at any categorical finding about the wages the workman was getting from his statement. Similarly Shri Dharm Singh WW-3 stated that his wages were Rs. 240 p.m. It is the case of the management that the wages of the Watchman were Rs. 360, so, there is no question of Shri Dharm Singh WW-3 working as watchman and for that matter the aggrieved workman also working as a watchman. In re-conciliation proceedings also the management took up the stand that it was ready to take back the workman as *Beldar* in the capacity he was already functioning but the workman refused to resume his duty on the flimsy grounds that he be taken back as a watchman. I see no reason to disbelieve a galaxy of witnesses examined by the management to prove that the workman was employed as a *Beldar* and not as Watchman and he proceeded on leave without getting the same sanctioned. So the crux of my foregoing discussion is that the workman remained unemployed because of his adamant attitude, who wanted to join the respondent as a watchman, in which capacity, he was never employed by the respondent and that he abandoned the job of the *Beldar* of his own, though the management was ready to take him back in the same capacity in which he was employed as earlier. But taking a compassionate view of the whole matter, I order reinstatement of the workman as a *Beldar* with continuity of service but without back wages.

Before parting with this reference, I am constrained to observe that the reference to this Court are not made by the Labour Department after due consideration of the real controversy between the parties. In this case also the case of the workman was that he never abandoned his employment as alleged by the respondent during the course of re-conciliation proceedings and the stand of the management before the Reconciliation Officer was also clear and categorical that the management was ready to take back the workman as *Beldar* but not as a watchman, in which capacity he was never employed by the respondent. So real and the controversy between the parties substantially spills over from the terms of the reference made to this Court. The reference is answered and returned accordingly. There is no order as to cost.

Dated 18th September, 1984.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endst. No. 66/79/3273, dated 1st October, 1984.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.